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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/934,629	08/21/2001	Martin A. Kapp	Q962-DB	8657

31718 7590 03/08/2005

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EXAMINER


MCCLELLAN, JAMES S

ART UNIT	PAPER NUMBER
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3627

DATE MAILED: 03/08/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

 <b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>		
	09/934,629		KAPP, MARTIN A.		
	<b>Examiner</b>		<b>Art Unit</b>		
	James S McClellan		3627		

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 03 December 2004.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-23 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-11, 22 and 23 is/are rejected.
- 7) ☒ Claim(s) 12-21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## DETAILED ACTION

### *Amendment*

1. Applicant's submittal of an amendment was entered on 12/3/04, wherein:  
claims 1-23 are pending, wherein  
claim 23 has been added.

### *Claim Rejections - 35 USC § 103*

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. Claims 1-11 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 6,009,408 (hereinafter "Buchanan") in view of Internet Publication "200 Per Diem Amounts" by Vernon Hoven (hereinafter "Hoven").

Regarding **claim 1**, Buchanan discloses a system (see Figure 1) for determining travel deductions for taxpayers who stay overnight in cities remote from their homes as part of their employment (see column 4, lines 32-42), comprising: a table identifying allowed per diem expense rates for a given tax year (see column 1, lines 46-49); means for inputting and maintaining data in said table (it is inherent that per diem data is inputted); means for inputting cities visited and durations of stay for a taxpayer (see column 1, lines 44; "travel itinerary information"); means for inputting expense reimbursements received from the taxpayer's employer (see column 3, lines 27-30);

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means for calculating a total of all per diem expenses based upon the per diem and number of days stayed in said cities (see column 5, lines 3-7); and means for offsetting the reimbursements against said total to determine an incidental expense allowance (see column 5, lines 3-7); [**claim 2**] a client information table including a taxpayer's profile information (see column 1, lines 66-67); [**claims 3-4**] an airplane table information (see airline flight information in column 7, line 7); [**claims 5-6, 8, 10-11**] IRS table information (see column 4, lines 32-34); [**claim 7**] zip code table information (it is inherent that zip code information is available from travel itineraries.

Buchanan fails to explicitly disclose the use of IRS per diems based on the traveler's destination city.

Hoven teaches that the IRS allows per diems based on a traveler's destination city (see Page 1, "Option 2").

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Buchanan based on the per diem allowances taught by Hoven, because tax related expense allowances are controlled by the IRS's current rules.

Regarding claims 9 and 23, Hoven discloses all the claimed elements as set forth above, but fails to explicitly disclose a meal rate percent table.

Hoven clearly teaches the use of a applying a meal rate percent table (see "Option 2. Meals only").

As set forth above, it would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Buchanan based on the meal rate allowances taught by Hoven, because tax related expense allowances are controlled by the IRS's current rules.

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4. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over Buchanan in view of Hoven as applied to claims 1-11 above, and further in view of Official Notice.

Regarding **claim 22**, Buchanan in combination with Hoven disclose all the claimed elements as set forth above but fail to explicitly disclose assigning tasks to employees based on an employees skill level.

The Examiner takes Official Notice that assigning tasks to employees based on skill level is old and well known in the art.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to modify Buchanan's modified device with assigning tasks based on an employee's skill level as is old and well known in the art, because assigning tasks based on skill level maximizes the effectiveness of the employees by concentrating employee skill on similar tasks.

#### ***Response to Arguments***

5. Applicant's arguments filed December 3, 2004 have been fully considered but they are not persuasive.

On page 12, first paragraph, Applicant alleges that Hoven is not prior art because Hoven is allegedly not an invention. It appears that Applicant is arguing that non-patent literature is not prior art. Hoven describes process steps used by systems relevant to Applicant's claimed invention and includes a publication date of July 1998. Therefore, Hoven is a valid prior art reference.

On page 13, first paragraph, Applicant argues that Hoven teaches away from Buchanan. Based on Applicant's previous argument that Hoven is not an invention, it is

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unclear how Applicant can argue that Hoven teaches away from Buchanan. Buchanan teaches a first method of organizing and presenting tax related data and Hoven teaches a legal alternative method of organizing and presenting tax related data. It would be obvious to modify Buchanan to organize and present tax related data using any legal method.

On page 14, Applicant argues that the element of producing supporting document and IRS schedules as required by claim 10 is lacking from Buchanan. The Examiner respectfully disagrees. Buchanan in combination with Hoven teach all the limitations of claim 10. More specifically, Buchanan discloses two-communication between a user and the IRS, wherein supporting documents (such as paper receipts; see column 4, lines 48-50) are sent to the IRS. Hoven teaches the use of producing IRS schedules (per diem schedules) as set forth above in the 35 U.S.C. § 103 rejection.

On page 15, Applicant fails to adequately traverse the Examiner's assertion of Official Notice of claim 22. A proper traversal of Official Notice requires Applicant to specifically point out the supposed errors in the examiner's action (see M.P.E.P. 2144.03). Additionally, Applicant's inadequate traversal of the examiner's assertion of Official Notice indicates Applicant's admission the examiner's Official Notice assertion is prior art (see M.P.E.P. 2144.03).

On page 16, Applicant's argument related to claim 12 is persuasive, claims 12-21 are allowable over the prior art.

On page 16, third paragraph, Applicant argues that the Examiner failed to cite particular part of references nor provide comments related to claim 9. The features of

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claim 9 and newly added claim 23 are directed to meal rate data which is clearly taught by Hoven as set forth above in detail.

***Allowable Subject Matter***

6. Claims 12-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

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8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jim McClellan whose telephone number is (703) 305-0212. The examiner can normally be reached on Monday-Friday from 9:30 to 6:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Olszewski, can be reached at (703) 308-5183.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

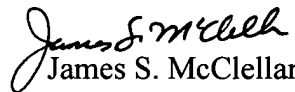
Any response to this action should be mailed to:

Commissioner of Patent and Trademarks  
Washington D.C. 20231

or faxed to:

(703) 872-9306 (Official communications) or  
(703) 746-3516 (Informal/Draft communications).

Hand delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7<sup>th</sup> floor receptionist.

  
James S. McClellan  
Primary Examiner  
A.U. 3627

jsm  
March 4, 2005